Supreme Court, U.S.
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No. 87-1003

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MICHAEL SCHAEFER,

Appellant,

v.

STATE ADMINISTRATIVE BOARD OF ELECTION LAWS AND STATE ADMINISTRATOR OF ELECTION LAWS,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND AND THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY (MARYLAND)

MOTION TO DISMISS

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether a constitutional challenge by an unsuccessful U. S. Senate candidate in the Republican primary to the application of a State law requiring the alphabetical listing of candidates was correctly dismissed as moot where the plaintiff essentially sought only injunctive relief as to his own candidacy in the 1986 primary election?

2. Whether a substantial equal protection question is raised by the application of Maryland's statutory requirement that the names of candidates for elected office be arranged alphabetically on the ballot?

3. Whether the assessment of $1,069.20 in appeal costs, most of which consisted of charges for printing a brief and record extract, against a non-indigent litigant in an election law challenge, raises a properly presented and substantial federal question under the First and Fourteenth Amendments of the U. S. Constitution?

PARTIES

In addition to the State Administrative Board of Election Laws and the State Administrator of Election Laws, Appellant Schaefer initially named as defendants below the other ten U. S. Senate candidates in the Republican primary: Linda Chavez, Monroe Cornish, Howard D. Greyber, George Haley, Abraham H. Kalish, Nicholas T. Nonnenmacher, Melvin Perkins, Horace Stuart Rich, Herbert Stone Rosenberg, and Richard Sullivan. On July 31, 1986, Schaefer moved for dismissal of the defendant candidates, although no order was entered dismissing these persons as parties. On August 28, 1986, candidate Chavez answered the complaint in the Circuit Court for Anne Arundel County. None of these candidates participated in the subsequent appellate proceedings.

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No. 87-1003

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

MICHAEL SCHAEFER,

Appellant

v.

STATE ADMINISTRATIVE BOARD OF ELECTION LAWS and STATE ADMINISTRATOR OF ELECTION LAWS,

Appellees

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND AND THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY (MARYLAND)

MOTION TO DISMISS

Appellees, State Administrative Board of Election Laws and State Administrator of Election Laws ("the State"), pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the appeal of Michael Schaefer of the judgment of the Circuit Court for Anne Arundel County

upholding the constitutionality of Article 33, §16-5(a) of the Maryland Code (dismissed as moot by the Court of Special Appeals of Maryland, with subsequent review by certiorari denied by the Court of Appeals) be dismissed for lack of jurisdiction or, alternatively, for want of a substantial federal question. If the Court of Appeals' refusal to entertain the issue of the recognition of a First Amendment immunity from the payment of appeal costs awarded under Maryland Rule 1082(a) is deemed properly presented and appealable under 28 U.S.C. §1257(2), the State also moves that this appeal be dismissed for failure to present a substantial federal question.

OPINIONS BELOW

The August 28, 1986 Opinion and Order of the Circuit court, the May 1, 1987 opinion of the Court of Special Appeals, and the

September 9, 1987 order of the Court of Appeals denying certiorari are found in the Appendix to Appellant's Jurisdictional Statement (A.J.S.). The last order is also noted in 310 Md. 491, 530 A.2d 273 (1987). Not included in Appellant's Appendix are the transcribed oral opinion and a July 8, 1986 order of the Circuit Court denying Appellant's request for an interlocutory injunction and a June 2, 1987 order (letter) of the Court of Special Appeals denying Appellant's motion for reconsideration.

JURISDICTION

The Appellant invokes jurisdiction under 28 U.S.C. §1257(2). The State contends that Schaefer's equal protection challenge to Article 33, §16-5(a) of the Maryland Code is moot and, thus, appellate jurisdiction is lacking as to that claim. In addition, the issue of the candidate's First Amendment challenge to the award of appeal costs under

Maryland Rule 1082(a), if properly presented, would appear to be reviewable under 28 U.S.C. §1257(3), not §1257(2).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Pertinent provisions of the United States Constitution and the Maryland Election Law are set forth in the Appellant's Jurisdictional Statement (J.S.). Also relevant to his First Amendment claim are the following provisions of Chapter 1000 of the Maryland Rules of Procedure (Appeals to the Court of Special Appeals):

Rule 1081 a.

> In taxing the costs in a case the Clerk shall include the allowance determined pursuant to section b of this Rule for printing the briefs, the record extract, and any necessary appendices to briefs, the amount, if any, paid by the appellant for the original and the copies of the stenographic transcript of testimony furnished pursuant to section a 2 of Rule 1026 (Record on Appeal), and the cost of printing a motion to dismiss if the motion is granted.

Rule 1082 a.

> In all cases in this court the awarding of costs shall be in the discretion of this Court, but unless it is otherwise ordered by this Court costs shall be awarded against the losing party.

Rule 1082 c.

> When unnecessary matter has been included in a record extract or appendix or when a brief, appendix, or record extract has not been printed in accordance with section a of Rule 1031 (Style and Contents of Brief), the costs of printing may be withheld or divided as this court may direct.

STATEMENT OF THE CASE

In the State of Maryland, in 1986 some 2,700 candidates for public office filed to run in more than 1,000 election contests. The offices to be filled ranged from federal posts, such as U. S. Senate, to State-wide offices, such as Governor and Attorney General, to distinctly local offices, such as school boards and registers of wills. Eleven candidates sought the Republican nomination for a U. S. Senate seat to be voted on in the September 9, 1987, primary. Pursuant to §16-

5(a) of Article 33 of the Maryland Code, they were all slated to be listed alphabetically on the ballot according to their surnames.

On July 3, 1986, one of those senatorial candidates, Appellant Schaefer, filed a "complaint for injunction" and "motion for preliminary or interlocutory injunction" alleging that §16-5(a) denied him equal protection of the laws. He sued only in his own name and on behalf of his own candidacy; he was not joined in his lawsuit by supporters, associates or voters; he did not file a class action. His prayer for relief sought a permanent injunction enjoining and restraining the State "from certification of candidates in an alphabetical manner as to election of Republican Nominees for U. S. Senate in the September 9, 1986 primary throughout the State of Maryland." 1/

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1 Although a paragraph of Schaefer's complaint stated "[t]hat the Court should declare said Maryland statute unconstitutional and order election agencies and officials to proceed in (continued)

Upon the submission of affidavits by all parties (including expert testimony) and full briefing of the equal protection issue, the Circuit Court held an expedited hearing on July 8, 1986 to consider Schaefer's request for an interlocutory injunction. Following the hearing, Judge James C. Cawood, Jr. issued an oral opinion that analyzed the submitted authorities, concluded that it was not unconstitutional to use an alphabetical listing on the ballot, and held that the candidate was not reasonably likely to succeed on the merits of his claim. Although

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a manner consistent with plaintiff's constitutional rights herein," it is clear that neither the parties nor the circuit court treated the proceedings below as a declaratory judgment action. Schaefer did not invoke the Maryland Declaratory Judgment Act, Md. Code, Courts and Judicial Proceedings Article, §3-401, et seq., or comply with its terms, particularly with respect to notice, parties and allegations, see §3-405 and §3-409. As a result, the trial court did not issue a judgment declaring the rights of the parties, which Maryland law requires in a true declaratory judgment action. See Courts and Judicial Proceedings Article, §3-411; Broadwater v. State, 303 Md. 461, 469, 494 A.2d 934, 938 (1985).

Schaefer could have immediately appealed the denial of interlocutory relief under Md. Code, Cts. & Jud. Proc. Art., §12-303(c)(3) and actually considered an expedited appeal (R. 228), he declined to do so.

Subsequently, the State moved for summary judgment in Schaefer's action for permanent injunctive relief, submitting no new further affidavits or evidence. The candidate opposed the motion on the grounds that "there exists a question of fact, i.e., is there a preference or advantage to being listed in any particular place on a ballot listing of candidates"; and that the State had failed to show a compelling interest as to the statement of facts before the court. However, he too submitted no additional evidence and asked the Court to rule on the papers before it. On August 28, 1986, Judge Cawood granted the State's motion, noting that "[a]lphabetical order has been commonly

accepted for lists of people since the history of the alphabet, and was the way all or almost all ballots were originally set up"; that the fact that some statistical advantage may at some time accrue to one of the candidates would not invalidate Maryland's ballot arrangement law; and that "[w]hether applying a 'rational basis' or 'strict scrutiny' test, we think the Maryland system of alphabetical listing passes constitutional muster." A.J.S. at A-2 and A-3.

On September 1, 1986, Schaefer filed a routine appeal with the Court of Special Appeals. On September 9, the primary election was held. Linda Chavez won the Republican nomination for U. S. Senate with more than 100,000 votes; Schaefer, a political unknown in Maryland, finished second out of eleven candidates with 16,902 votes -- largely on the basis of the similarity of his name with that of the

successful Democratic candidate for Governor, William Donald Schaefer.

On May 1, 1987, the Court of Special Appeals issued an opinion holding that "[b]ased on the particular remedy sought ... no controversy currently exists between the parties; no effective remedy is possible; and the question raised has become moot." A.J.S. at A-7. The Court added that "[i]f, by happenstance, the issue ever again arises, there would be no difficulty in having it resolved in a timely fashion as a viable issue." Id. at A-9. The Court's order noted "Appeal dismissed. Costs to be paid by Appellant." Id.

On May 26, 1987, Schaefer moved the Court to reconsider its decision, arguing only that the case had not become moot. This motion was denied on June 2, 1987. On the same day the Court's mandate issued with a statement of $1,069.20 in costs, most of

which consisted of the expenses of printing briefs and record extracts. The largest item was $705.60 for printing materials which the State included in its record extract because Schaefer declined to include them in his own.

Appellant filed a petition for certiorari in the Court of Appeals, asking the Court to review the issues of the constitutionality of the alphabetical listing statute and of the mootness of his claim. In addition, Schaefer, for the first time, sought review of the issue of whether "costs in a proceeding of this nature [were] properly charged to plaintiff personally." In a "supplemental" memorandum filed several days later, the candidate argued that the award of costs had a chilling effect on his First Amendment right to petition the government. On September 9, 1987, the Court denied Appellant's petition for certiorari.

I. Appellant's action to enjoin as unconstitutional Maryland's alphabetical listing of candidates in the September 1986 primary was properly dismissed as moot.

It is Appellant's position that an election law challenge can never become moot, J.S. at 11, and that such controversies are always "capable of repetition yet evading review" within this Court's long recognized exception to the mootness doctrine. See Storer v. Brown, 415 U.S. 724, 737, n. 8 (1974). He also now asserts that he "may" be a candidate again in the future and that this is enough to render his ballot arrangement challenge presently justiciable. J.S. at 11. These contentions are simply erroneous.

Election law challenges seeking only injunctive relief for a single election can be found moot. See Love v. Griffith, 266 U.S. 32, 34 (1924); Salera v. Tucker, 399 F.Supp. 1258, 1262 (E.D.Pa. 1975), aff'd on other grounds sub. nom. Tucker v. Salera, 424 U.S. 959 (1976). Moreover, the holding of

the election coupled with the absence of class representation and the lack of "evidence" of an intention to seek future office could result in a finding of mootness. Salera v. Tucker, supra, 399 F.Supp. at 1262, n. 4.

It was not just the holding of the September 1986 primary that led the Court of Special Appeals to conclude that Schaefer's appeal was moot, but also "the particular relief sought." A.J.S. at A-7. He asked only for an injunction with respect to the 1986 election, not future elections. He did not seek or obtain a declaratory judgment. Furthermore, Schaefer brought his action solely in his own name and for the benefit of his 1986 candidacy, not as a class action on behalf of supporters or voters. And, despite his asserted interest in a future candidacy, he passed up the opportunity to be a

candidate in the 1988 elections in Maryland, including another U. S. Senate race.

It is also noteworthy that this was not a ballot access case with an impact on voting rights, but a ballot arrangement challenge, of singular interest to the individual candidate. Such a challenge is so intertwined with facts peculiar to each election, that even if Schaefer's constitutional claim had some merit, the allegedly unconstitutional conduct would not continue from election to election. 2/ These factual variances, coupled with the clarity of §16-5(a)'s provisions, undercut the likelihood that continuance of Schaefer's action "will have the effect of simplifying future challenges," Storer v. Brown, supra, 415 U.S. at 737, n. 8.

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2 In his complaint in the Circuit Court, Appellant conceded that the so-called advantage of top-of-the-ballot listing varied "depending on the visibility of the office, and the number of candidates seeking said office."

Finally, this is not a case where the Maryland appellate courts have placed "hinderances in the way" of taking up federal constitutional issues, Love v. Griffith, supra, 266 U.S. at 34, or one that will necessarily evade appellate review. The candidate could have sought expedited review of the Circuit Court's July 8, 1986 decision to deny an interlocutory injunction, but simply declined to do so. For all of these reasons, the Court of Special Appeals correctly concluded that Schaefer's injunction action was moot. Similarly, this Court should dismiss Appellant's appeal as moot.

II. No substantial equal protection question is raised by the application of Maryland's statutory requirement that the names of candidates for elected office be arranged alphabetically on the ballot.

Appellant has pointed out that the way in which candidates are listed on the ballot varies among the states. Thus, he concludes,

"[t]here is inconsistency in federal elections." J.S. at 5. However, the mere fact that there are differences among the states in the manner in which federal officials are elected raises no constitutional issue. Indeed, the Constitution clearly sanctions such differences as an element of the federal system. Thus, Article II, Sec. 1, Cl. 2 provides for the appointment of Presidential Electors by each state "in such manner as the Legislature thereof may direct." Similarly, the Constitution provides that subject to the overriding power of Congress, "the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." Art. I, Sec. 4, Cl. 1. Of course, the states' exercise of this broad, residual power to regulate the election of federal officials is subject to the various limitations of the

federal Constitution, including the Equal Protection Clause.

Although the Fourteenth Amendment forbids the states to deny to any person the Equal Protection of the Laws, it is an elementary principle of constitutional law that this clause does not flatly forbid the states to make distinctions. Ordinarily, a distinction or classification must simply be rationally related to a legitimate State interest. City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976). Of course, where a distinction involves a suspect classification or fundamental right, it is subject to strict scrutiny and must serve a compelling State interest. Plyer v. Doe, 457 U.S. 202, 216-217 (1982). Although the right of qualified voters to cast their ballots has been regarded as fundamental of this Court and is clearly related to the right to run for public office, this Court has not found the

right to run for public office to be itself a fundamental right. Bullock v. Carter, 405 U.S. 134, 142-144 (1972) and Clements v. Fashing, 457 U.S. 957, 963 (Court's Opinion) and 977, n. 2 (Dissent) (1982). Moreover, this Court has recognized that a State Legislature may anticipate potential problems in the electoral process, such as voter confusion, so long as it acts reasonably and does not significantly burden constitutionally protected rights. Munro v. Socialist Workers Party, ____ U.S.____, 107 S.Ct. 533, 538 (1986).

With respect to ballot position cases, the lower federal courts have consistently applied a rational basis standard. McLain v. Meier, 637 F.2d 1159, 1167 (8th Cir. 1980), Krasnoff v. Hardy, 436 F.Supp. 304, 308 (E.D.La. 1977), and Clough v. Guzzi, 416 F.Supp. 1057, 1066-1067 (D.Mass. 1976). Indeed, the Court of Appeals for the Seventh

Circuit has required a showing of intentional discrimination and actual disadvantage. Board of Election Commissioners v. Libertarian Party, 591 F.2d 22, 24-25 (7th Cir. 1979), cert. denied 442 U.S. 918 (1979). In the latter case, it was recognized that a state had a legitimate interest in making the ballot as convenient and intelligible as possible for the great majority of the voters. Id. at 27.

Although Schaefer claims that the only clear interest served by listing the candidates in alphabetical order is the convenience of election officials, J.S. at 5, this is manifestly untrue. An alphabetical listing clearly assists voters in finding the name of the candidate of their choice. This is especially so when, as was the case of Appellant's race, there is a sizeable field of candidates on a crowded ballot. Moreover, Schaefer's second place finish in a field of

eleven candidates suggests that his candidacy was not burdened by the alphabetical listing of his name on the ballot. Any burden which might occur is clearly outweighed by the State's interest in assisting voters in expressing their choice.

Because Appellant has not shown that the decision below conflicts with any decision of this Court or that any conflict among state or federal courts exists with respect to the constitutionality of an alphabetical listing requirement for candidates, his appeal should be dismissed for failure to state a substantial federal question.

III. The candidate's First Amendment challenge to the payment of appeal costs does not properly present a substantial federal question.

There are many reasons why Appellant's attempt to immunize himself from the payment

of appeal costs is not worthy of this Court's attention.

First, even though a court rule may be deemed a state "statute" for purposes of 28 U.S.C. §1257(2), see In re Griffiths, 413 U.S. 717 (1973), Schaefer has not sufficiently drawn into question the constitutionality of Maryland Rule 1082a, but has simply asserted a cliam of First Amendment right. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 562, n. 4 (1980). In fact, he did not even cite the Rule to this Court or the Court of Appeals of Maryland. Thus, Appellant cannot appeal this issue by way of 28 U.S.C. §1257(2).

Second, following a judgment against him in the Court of Special Appeals (including costs), Schaefer filed a motion for reconsideration, but still did not raise the issue of a claimed First Amendment right to shift the costs of his appeal to the State. He did

not ask the intermediate appellate court to exercise its discretion under Rule 1082a to withhold or divide costs or to find under Rule 1082c that the State had included unnecessary matter in a record extract. The constitutional issue was raised for the first time in a petition for certiorari denied by the Court of Appeals. There is no language in any opinion or order indicating that the constitutional issue was considered or disposed of. For this reason, Schaefer's appeal should be dismissed.

Third, even if the First Amendment claim were properly presented, it is wholly insubstantial. At issue is $1,069.20, a portion of which consisted of Appellant's filing fees and briefing costs and other charges necessary to present his appeal. The largest component is the cost of a record extract prepared by the State because of Schaefer's refusal to include certain

requested material in his filing. This dispute, however, could have been resolved by resort to mechanisms in the Maryland Rules of Procedure. See Rule 1082c.

Fourth, even though the First Amendment right to petition includes the right of access to the courts, California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972), no case of this or any other court holds that the First Amendment protects a litigant from paying court costs. The only decision cited by Appellant, City of Long Beach v. Bozek, 31 Cal.3d 527, 183 Cal.Rptr. 86, 645 P.2d 137 (1982), undercuts his position. While holding that the First Amendment bars a governmental action for malicious prosecution, the Supreme Court of California notes that, from a constitutional standpoint, an award of expenses is a clearly preferable remedy to an independent action for malicious prosecution. 645 P.2d at 143.

Finally, Appellant, a hotel owner and lawyer, J.S. at 3, is not indigent and clearly could afford to pay for the appeal costs assessed.

CONCLUSION

For all of the above reasons, the State urges that its motion to dismiss be granted and that Schaefer's appeal be dismissed for lack of jurisdiction or, alternatively, for want of a substantial federal question.

Respectfully submitted,

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Attorneys for Appellees

(b) Before admission to the bar, each applicant shall be passed upon by the committee in his district as to his good moral character and general fitness to practice law. He shall furnish the committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning the history. Each applicant shall appear before the committee of his district or some member thereof and shall furnish the committee such evidence of his good moral character and general fitness to practice law as in the opinion of the committee would justify his admission to the bar.

(c) If the committee is of the opinion that the applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the bar. If the committee is not of that opinion, it shall file with the Board of Law Examiners a statement that it cannot so certify, together with a report of its findings and conclusions.

(d) An applicant who has availed himself of his full hearing rights before the Committee on Character and Fitness and who deems himself aggrieved by the determination of the committee may, on notice to the committee, petition the Supreme Court for relief.

Supreme Court Rule 709. **Power to Make Rules.**

(a) Subject to the approval of the Supreme Court, the Board of Law Examiners and the Committee on Character and Fitness shall have the power to make, adopt, and alter rules not inconsistent with this rule, for the proper performance of their respective functions.

Illinois Supreme Court Rules on "Admission and Discipline of Attorneys", Chapter 110A, *Illinois Revised Statutes* , Section 708 (c) (eff. August 1, 1987, as amended):

Supreme Court Rule 708. Committee on Character and Fitness

> (c) If the committee is of the opinion that the applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the bar unless the court orders otherwise. If the committee is not of that opinion, it shall file with the Board of Law Examiners a statement that it cannot so certify, together with a report of its findings and conclusions.

Rules of Procedure, Character and Fitness Committee of the Supreme Court of Illinois, First District:

> *Rule 3. Initial Review of Questionnaire.*
> When the questionnaire shall been (sic) substantially processed, it shall be reviewed by the Administrator or an Examiner and if no adverse matters bearing on the Applicant's Character and fitness are apparent, the Administrator shall certify the Applicant to the Board for Admission to the Bar. In the event that Applicant is not so approved for certification, the Chairman shall assign the application, consisting of Applicant's original and supplemental questionnaires and supplemental documents, to an Inquiry Panel of the Committee for further review and examination.
>
> *Rule 4.3* The Inquiry Panel may certify an Applicant only by an unanimous vote, upon which the Secretary shall be promptly so notified in writing.
>
> *Rule 4.4* In the event the Inquiry Panel has not voted to certify the Applicant, the Secretary shall thereupon be so advised, including a report of the findings of adverse matters, and the Chairman shall thereupon impanel a Hearing Panel, none of whom shall have been members of the Inquiry Panel considering the Applicant, to formally consider the application upon a date certain.

Rule 5. Hearing Panels.

Rule 5.1 The Hearing Panel shall consist of seven members of the Committee, including the Chair-Person as designated by the Chairman...

Rule 5.2 Upon impaneling the Hearing Panel, the Secretary shall notify the Applicant by certified mail of:

(a) The date, time and place of such hearing;

(b) The matters adverse to Applicant, as specified by the Inquiry Panel;

(c) If such adverse matters were based in full or in part upon statements from other persons, the names of such persons;

(d) The Applicant's rights to be represented by counsel, to examine and cross-examine witnesses, to adduce evidence bearing on the aforesaid adverse matters and upon the Applicant's moral character and fitness, and for such purpose to make reasonable use of the Committee's subpoena powers under Rule 7 and shall also supply the Applicant with a copy of these rules.

Rule 5.3 The hearings before the Hearing Panel shall be private... conducted in a formal manner, with the Applicants' (sic) having the rights heretofore referred to. The Chairman shall appoint counsel from among members of the Bar (including members of the staff of the Attorney Registration and Disciplinary Commission) to prepare and present the matters adverse to the Applicant. The burden of proof shall be on the Applicant to establish his good moral character and fitness. The Hearing Panel shall not be bound by the formal rules of evidence; it may in its discretion take evidence in other than testimonial form, having the right to rely upon records and other materials furnished to the Hearing Panel in response to its requests for assistance

in its inquiries pursuant to these rules and Supreme Court Rule 709; and it may further in its discretion determine whether any evidence to be taken in testimonial form shall be taken in person at the hearing or upon deposition, but all testimonial evidence shall in either event be taken under oath. The matters to be considered by the Hearing Panel need not be limited to the matters of concern set forth in the notice to the Applicant of the matters adverse to the Applicant...

Rule 5.5 If the Hearing Panel shall vote to certify any Applicant, the Secretary shall promptly be so notified, in writing.

Rule 5.6 If, after a hearing, the Hearing Panel is not prepared to certify the Applicant, it shall deliver a report of his findings and conclusions to the Secretary and the Board, with a copy being furnished to the Applicant.

Rule 6.1 The secretary shall notify each Applicant who has been certified promptly after such action.

Rule 6.2 Each certification of an Applicant for admission on examination prior to the announcement of the result of such examination, who fails to pass such examination, shall be a tentative certification..

APPENDIX G

February 17, 1986 Letter

APPENDIX G

February 17, 1986 Letter

* * * * *

Committee on Character and Fitness
By Appointment of the Illinois Supreme Court
203 North Wabash, #2100
Chicago 60601
(312) 236-1743

February 17, 1986

Mr. Edward Anthony Loss, III
83 Sandhurst Road
Mundelein, Illinois 60060

Dear Mr. Loss:

Please be advised that the Hearing Panel for the Committee on Character and Fitness, First Judicial District, has recommended that you be Certified by the Committee for admission to the Illinois Bar.

There will be a period of one week to 10 days for paperwork on the Certification to clear the proper offices, after which I will notify you of the clearance and the procedure for being sworn in at the earliest date.

Yours very truly,

_____

(Mrs.) Mary J. Lampman
Secretary

MJL/lm

cc: William Haddad, Esq.
Committee File

APPENDIX H

Order of October 30, 1987

APPENDIX H

Order of October 30, 1987

• • • • •

DOCKET NO. M.R. 3972

IN THE
SUPREME COURT OF ILLINOIS

In re:	)
	)
EDWARD A. LOSS III,	)
	)
Petitioner.	)

O R D E R

This cause coming to be heard on a motion of William J. Haddad, and two motions by the petitioner, and the court being fully advised in the premises:

(1) • • •

(2) IT IS FURTHER ORDERED that Loss' motion to stay this court's mandate pending timely filing and disposition of a petition for a writ of certiorari in the Supreme Court of the United States is allowed.

(3) IT IS FURTHER ORDERED that Loss' motion to supplement the record with the contents of alleged informal communications is denied, that matter being fully addressed by Justice Ryan in his special concurring opinion filed September 2, 1987, in which Chief Justice Clark, Justice Moran and Justice Miller joined.

Justice Ward, heretofore not participating in this cause, joins in this order.

Justice Simon, concurring in part and dissenting in part from the order of October 30, 1987:

For the reasons stated in my dissent to the court's June 4, 1986 order, my dissent to the amendment of Rule 708 (c) filed on April 10, 1987, and my dissent to the majority opinion filed on August 17, 1987, I believe that the requests made by the movant in his Motion to Supplement the Record With The Contents Of Alleged Informal Communications filed on September 4, 1987 are proper and that his motion should be allowed. I therefore dissent from the denial of that motion, but concur in the portion of the court's order allowing attorneys fees and expenses and staying the mandate.